

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 297] NEW DELHI, TUESDAY, SEPTEMBER 27, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION.

New Delhi, September 18, 1955

S.R.O. 2111.—Whereas the election of Shri Ladu Ram Chaudhary as a member of the Rajasthan Legislative Assembly from the Neem ka Thana 'A' Constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Thakur Madan Singh, Jagirdar, Thikana Danta, District Sikar:

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission:

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION No. 17 of 1953

Th. Madan Singh, Rajput, Jagirdar Thikana Danta, District Sikar—*Petitioner.*

Versus

1. Ladu Ram Chaudhary of village Gordhanpura, Tehsil Danta Ramgarh.
2. Jagan Singh of village Batranan, Tehsil Lachhmangarh.
3. Hanuman of Khandela, District Sikar.
4. Dwarka Prasad of Sikar.
5. Tilok Chand of village Alfasar Churi Ajit Garh, Tehsil Fatehpur.
6. Motiram of village Kotri, Tehsil Sikar.
7. Shri Krishna of Khandela, District Sikar—*Respondents.*

PRESENT

Shri A. N. Kaul.—*Chairman.*

Shri S. N. Gurtu.—*Member.*

Shri R. K. Rustogi.—*Member.*

For the petitioner:—Shri Hari Prasad Gupta & Shri Ram Krishna Purohit
Advocates.

For respondent No. 1:—Shri Bimla Charan Chatterji & Shri Chandan Singh,
Advocates.

JUDGMENT

(By the Tribunal)

(PER KAUL CHAIRMAN).

Through this election petition, the election of respondent No. 1 at the bye-election to the Rajasthan Legislative Assembly in the Neem Ka Thana 'A' Constituency held on the 24th May, 1953, has been challenged by the petitioner Th. Madan Singh who along with the respondents was a nominated candidate at the election. The counting of votes took place on the 26th May, 1953, and respondent No. 1 was declared elected by a majority of 38 votes. The election is challenged on various grounds and the petitioner seeks to get the election of Respondent No. 1 declared void since, according to him, the election has not been a free election by reason that corrupt practices and undue influence had extensively prevailed and coercion and intimidation had been exercised by Respondent No. 1 and his agents. Nine Schedules relating to various allegations in the petition are annexed to it.

Respondent No. 1 who alone has contested the petition has, in his written statement, denied each and every one of the allegations of corrupt and illegal practices made in the petition or in the annexed schedules and has in the additional pleas made counter allegations of corrupt and illegal practices alleged to have been committed by the petitioner or his agents, details of which have been given in ten schedules annexed to the written statement. He has further alleged, in the additional pleas, that the petitioner being a Jagirdar of Thikana Danta and being thus a holder of an office of profit under the State of Rajasthan is disqualified from standing as a candidate and further that being also not a voter in the Neem Ka Thana 'A' Constituency he could not be a candidate nor was he competent to present the petition.

After the petitioner's counsel and that of Respondent No. 1 had been examined under o.10 r.1 for elucidation of certain obscure points in the pleadings as many as 35 issues were struck on the basis of the pleadings of the parties. Of these, issues Nos. 29, No. 33 and No. 34 being preliminary issues have been already decided through this Tribunal's order dated the 23rd March, 1954 (Annexure). On the remaining issues as many as 34 witnesses have been examined on behalf of the petitioner and 20 witnesses on behalf of the contesting respondent. Exhaustive arguments of learned counsel on both sides have been heard by us and we now proceed to deal with the issues *ad substantiam*.

Issue No. 1.—"Whether Respondent No. 1 himself or through his agents committed the corrupt practice of bribing:

- (a) By offering to get employment in the Rajasthan Government to persons named in Schedule I, if they supported his candidature and canvassed for him.
- (b) By offering Rs. 5 to every elector who would vote for him.
- (c) By entertaining electors with sweets and thandai (cold drink) at every polling station with the object of securing their votes."

The issue is based on the allegations contained in para 4 of the petition read with schedule I annexed to the petition. No arguments in regard to this particular issue were addressed to the Tribunal, on behalf of the petitioner, and it may be presumed from this that the issue was not seriously pressed. We may, however, point out that in respect of the allegations embodied in clause (a) of the issue, schedule I annexed to the petition contains a list of five persons only who are alleged to have been offered Government employment and the name of the person who offered to secure the employment is given in the schedule as Shri Har Lal Singh, the place as Khandela town and the date as 22nd May, 1953. Of the five persons named in the schedule only Brahmdukt P.W. 1, Baluram P.W. 6, Hanuman P.W. 18 and Madan Lal P.W. 28 have been produced on the petitioner's behalf while Ramdayal Singh, the fifth person has not been produced. Baluram does not say anything about the offer of a government job to him and was not even questioned on the point. Brahmdukt has admitted that he had worked in the Congress organisation until a fortnight before the bye-election and then joined the Ram Rajya Parishad for which he worked during the bye-election. He was a polling agent of the petitioner and is evidently interested in him. A person who thus changes colours is rarely reliable. His evidence on the point is to the effect that six days before the day of polling i.e., about the 18th of May, 1953, he along with other ex-congress workers were called to the congress office at Khandela by Shri Har Lal Singh, Shri Chandan Singh son of Respondent No. 1 and the respondent himself who tried to persuade them to rejoin the congress.

and even made an offer to the witness that in case he rejoined he would be provided with a government job. It will be seen that the date of the offer as alleged by the witness is the 18th May, while that given in schedule I is the 22nd May. Then again, according to the witness, three persons including the respondent made the offer jointly while the allegation in schedule I is that Shri Har Lal Singh alone made it.

Hanuman Prasad P.W. 18 is also a worker of the Parishad and a 25 years old employee of Thikana Khandela. He does say that on the 22nd May, Shri Har Lal Singh made to him an offer of 'a lift in his service' if he supported the congress candidate. But this is not the same thing as an offer of government employment as alleged in the schedule and in para 4 of the petition.

Madan Lal P.W. 28 is another worker of the Ram Rajya Parishad and his evidence is only to the effect that several congress workers who met him had tried to persuade him to vote for the congress and that Shri Har Lal Singh had told him that if he voted for the congress, he might get government employment if he wanted. The date and place of the alleged offer has not been stated in the evidence. Such vague evidence of a partyman uncorroborated by any independent evidence can hardly be believed. There is thus no satisfactory evidence in support of the allegations contained in clause (a) of the issue.

As to the allegation embodied in clause (b) of the issue, no list of specific particulars in this respect has been filed with the petition nor are any such particulars contained in the petition itself. Evidence tendered on this point cannot, therefore, be considered. We may refer in this connection to Doabia's Election Cases Vol. at page 276 (*Syd. Hifazat Ali v. Mr. Mohammad Isgar*), wherein, it was held that "facts not alleged specifically in the petition cannot be taken into consideration even if the evidence on the record regarding those facts could be held to be true?"

In regard to the allegation contained in clause (c) of the issue, Brahmdudd P.W. 1 is the only witness who has said that at the time of polling at Khandela on the 24th May 1953, the voters were in some cases entertained by workers of the respondent with cold drinks like 'thandai'. The evidence of this solitary witness who is a partyman, cannot be deemed sufficient to prove this allegation.

On behalf of the respondent Shri Har Lal Singh R.W. 20 who is an M.L.A., has refuted the allegation of the petitioner's witnesses made against him. He has stated that he does not even know Brahmdudd nor any person named as Hanuman Prasad at Khandela and that there could be no question of his having made any offer of government employment to any of these persons. Similarly Chaturbhuj R.W. 19 has denied that Hanuman Prasad was ever called to the Congress Office in his presence or that any offer of service was made to him. Chandan Singh R.W. 10 has also denied that he had any talk with Brahmdudd or that any offer of Government service was made to him in the presence of the witness. As pointed out by this witness, Brahmdudd is already overage—his age having been given in his statement as 33 years. In the circumstances, it was not likely that any offer of government service should have been made to them.

Our finding on the issue is, therefore, in the negative in regard to all its three clauses.

Issue No. 2.—"If the answer to any part of issue No. 1 be in the affirmative, then what is its effect on the election?"

In view of our finding on Issue No. 1, Issue No. 2 does not arise.

Issue Nos. 3 and 4.—"3. Whether respondent 1 himself and through his agents committed the corrupt practice of undue influence by

- (a) Having it preached by Muslim leaders and religious heads, specified in schedule II that, if Muslim voters did not vote for respondent 1. who was a congress candidate, the Muslims will be annihilated or will be turned out of India or will be subjected to social boycott and that the Quoran had given the direction to support only the party in power and its candidate.
- (b) systematic appeals to Jat voters of the constituency named in schedule IX, through Jat leaders named in the same schedule to vote for the Congress Jat candidate, the appeals having been supported by threats that electors who did not vote for the Congress Jat candidate will be outcaste.
- (c) If the answer to any part of Issue No. 3 be in the affirmative, what is its effect on the election?

Issue No. 3 is based on para. No. 6 of the petition of which the contents correspond to that of the issue and in which it is further stated that particulars and instances of the corrupt practice are detailed in schedule II. In that schedule however, there is only a list of eleven Muslim gentlemen who are alleged to have preached at Khandela town on different date from the 19th to the 23rd May, 1953. There is no reference in that schedule to any preaching to Jat voters of the constituency through any Jat leader.

During arguments learned counsel for the petitioner referred only to the evidence of P.W. 3 Bodu, P.W. 5 Rawat Man Singh P.S. 6 Baluram, P.W. 7 Roopnarain Shastri, P.W. 9, Laxmichand, P.W. 14 Dwarka Prasad, P.W. 18 Hanuman Prasad, P.W. 28, Madanlal, P.W. 31, Bhairon Singh, P.W. 32, Hari Prasad Vaidya, P.W. 33, Sobhag Singh and P.W. 34 petitioner himself, in support of clause (a) of issue No. 3. None of these witnesses has, however, referred to preaching by any Muslim leaders other than Shah Alimuddin, and a gentleman from Delhi whose name has been given by some of the witnesses as Mohammed Sadique. The name of the latter gentleman however, does not appear at all in the list of particulars, schedule II. The evidence tendered in regard to preaching by this gentleman has, therefore, to be excluded from consideration on the principle already enunciated. As to the alleged preaching by Shah Alimuddin the allegation in schedule II is that it took place on the 23rd May, at Bisaton Ka Mohalla, in Khandela town. Rawat Man Singh (P.W. 5) who is an M.L.A., and who is one of the most important witnesses for the petitioner has stated on the contrary that the meeting addressed by Shah Alimuddin was held on the 21st May in a Muslim locality. Apart, however, from this discrepancy regarding the date of the meeting, what Shah Alimuddin said at the meeting, according to this witness was that if the Muslims wanted to stay in India, the only thing for them was to vote for the congress since, in case any other party like the Ram Rajya Parishad or the Jan Sangh was voted into power, the Muslims were likely to be turned out of India. In our view there is nothing in this alleged speech of Shah Alimuddin which could be said to come within the purview of undue influence. Undue influence as defined in sub-section (2) of s. 123 means any direct or indirect interference or attempt to interfere on the part of a candidate or his agents or of any other person with the connivance of the candidate or his agents with the free exercise of any electoral right. In the proviso to sub-section (2), it has been further explained that any such person as is referred to in sub-section (2) who "threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community shall be deemed to interfere with the free exercise of an electoral right." Now there is nothing in the alleged speech of Shah Alimuddin which could be said to amount to interference direct or indirect or an attempt to interfere with the free exercise of any electoral right or to a threat to any elector of injury of any kind. The fear of being turned out of India which is said to have been referred to in the speech, does not amount to a threat on behalf of the Congress but only to an apprehension that if the Ram Rajya Parishad or the Jan Sangh come into power, the Muslims were likely to be turned out of India. The question whether this allegation against an opposing party was justified or not or whether it was a gross exaggeration or mis-statement of the attitude of any other party is immaterial. Even a mis-statement as to the intentions of an opposing party or the ascribing to any such party of an intention to harm a particular community cannot amount to a threat of injury to that community by the Speaker himself or through him by the party of the Speaker.

Bodu P.W. 3 has stated that the congress meeting addressed by the Muslim gentleman from Delhi and by other Muslim speakers was held 5 or 6 days before the polling which is again inconsistent with the date given in schedule II. Even according to this witness what the Muslims were told at the meeting by these Speakers was to vote for the Congress because it was on account of that institution that Muslims could live in India. There is no direct or implied threat in this alleged preaching.

Roop Narain P.W. 7 has gone a step further by saying that, at Congress meetings held in Khandela, Muslims were generally told that if they did not vote for the Congress candidate, they would receive the same treatment as had been meted out after partition to Muslims at Rewari and in the Alwar and Bharatpur States, but the witness neither gives any names of the speakers nor the dates and places of the meetings. In cross examination he admitted that he had heard the speeches through a loudspeaker while he was sitting in a Dharmshala, at a distance from the meeting. Such evidence is of little value but assuming that any Muslim Speakers said so that could not have meant a threat but only a fear of such consequences.

Laxmi Chand P.W. 9 says that Shah Alimuddin addressed a public meeting at Khandela two or three days before the polling which obviously cannot mean the 23rd May as stated in schedule II. According to him Shah Alimuddin told Muslims that they shall be protected if they voted for the Congress and would be driven out to Pakistan if they did not vote for it. In cross examination he admitted that the meeting of Muslim Bisaitics which probably took place on the following day was not attended by him. It is only the latter meeting of Muslims which is referred to in schedule II and evidence as to any other meeting must be ruled out. The witness is a resident of Jaipur and says that he remained at Khandela for seven days only before the polling in order to work for the Ram Rajya Parishad, having himself stood from that constituency on the Parishad Ticket during the General Elections. The witness does not appear to be reliable.

P.W. 14 Dwarka Prasad has stated that at the Congress Meetings held before the polling day on behalf of the Congress party, the Muslims were told that if they did not vote the Congress into power, they would be turned out of India and further that according to the Quoran, the Muslims were bound in duty to support the party in power and it would be a sin not to do so. In this alleged speech of which the speaker is not indicated, there is no threat or intimidation nor is there any allegation that the Muslims were administered a vow in the name of the Quoran to vote for the Congress. The name of Shah Alimuddin does not figure at all in the evidence of this witness.

Hanuman Prasad P.W. 18 while referring to a congress meeting held at Khandela in the afternoon near the Chopar, of which the date is not specified, says that prominent Muslim leaders from Delhi exhorted Muslim voters to vote for the Congress as it was the party in power and gave them a vow in the name of the Quoran to vote for the Congress candidate. Since the name of the Muslim leader from Delhi is not stated in schedule II and the witness does not give even the date of the meeting, the evidence does not deserve consideration.

Madan Lal P.W. 28, while referring to a speech of Shah Alimuddin at a Congress meeting says that the speaker exhorted Muslims to vote for the Congress which was the party in power and to be loyal to India and that if they did not do so, they would have to leave for Pakistan. There is nothing in this alleged speech which could come within the purview of a corrupt practice. The witness further says that he heard from certain Muslims of Khandela that Shah Alimuddin and the Muslim leader from Delhi had administered a vow in the name of the Holy Quoran to the Muslims to vote for the Congress candidate. This obviously is hearsay evidence and only the evidence of the Muslims concerned or of somebody present on the occasion in question could have been admissible on the point. Bhairon Singh, P.W. 31, gives similar hearsay evidence as to a religious vow alleged to have been administered to Muslims at a meeting in the local mosque at Khandela, by Shri Mohd. Sadique, the Muslim leader from Delhi. This evidence also cannot be taken into consideration for reasons already explained in the case of P.W. 28.

Hari Prasad, P.W. 33 in his evidence refers to a Congress meeting held at the Chopar in Khandela and addressed by Shah Alimuddin and Shri Mohd. Sadique of Delhi. He refers also to a secret meeting of Muslims held on the same day in the mosque of Bisaities about which he heard from some Muslim friends and further says that Muslims were administered a religious vow, at the meeting to support the candidate belonging to the party in power, i.e. the Congress. The dates of these alleged meetings do not tally with those given in schedule II and the latter part of the evidence is hearsay.

The evidence of the petitioner, as P.W. 34, in regard to what the Muslims told him after the visit of Shah Alimuddin and of the Muslim leader from Delhi is also hearsay evidence, and hence not admissible.

It will be seen from the above discussion of the evidence that it is either inconsistent with schedule II or hearsay and even where it is admissible there is nothing in it to support the allegation as to the commission of a corrupt practice.

As to sub-issue (b), the evidence led on the petitioner's behalf as to any preaching to Jat voters by any Jat leader has to be excluded from consideration since no particulars as to this alleged corrupt practice have been given in schedule II. The evidence of P.W. 6, P.W. 8, P.W. 14, P.W. 20, and P.W. 22 which relates to this part of the issue will not, however, stand scrutiny even if considered. Of these P.W. 6 Baluram while referring to the speeches of Shri Har Lal Singh and Shri Kumbha Ram at a Congress meeting attended by the witness says that he could not follow the speeches but heard from two Jats present at

the meeting that the speakers had preached the principle that a vote and a daughter of a Jat should go only to a Jat. Such evidence is obviously worthless.

P.W. 8, Kalyan Singh who was a polling agent of the petitioner at the bye-election, states that two or three days before polling about 150 people assembled at the house of Balu Patel at Agloi including Shri Har Lal Singh and Shri Chandan Singh (son of Respondent No. 1) and that the witness who was sitting outside Balu's house heard the people inside saying amongst themselves that a vote and a 'beti' of a Jat should be given to a Jat alone. There is no corroboration of this evidence, however, and it is, therefore, of little value.

P.W. 14, Dwarka Prasad refers to a meeting held on the 23rd May at Khandela at which Jat leaders Shri Kumbharam and Shri Har Lal Singh are alleged to have told the Jat voters that if they voted in favour of the Jat candidate, and a sufficient number of Jats were elected to the Assembly they could have a Jatistan. As pointed out by Shri Kumbha Ram, R.W. 18 and Shri Har Lal Singh, R.W. 20, themselves in their evidence, no responsible congress leader could have made such an absurd and outright communal appeal at a public meeting. In Khandela where, admittedly, the Jat population is practically in significant, such an appeal in public was even more unlikely. Shri Har Lal Singh had denied that he attended any meeting at Agloi and Shri Kumbha Ram was not put any question regarding the particular meeting.

P.W. 20, Bhagwan Sahai refers to an alleged exhortation by Shri Kumbha Ram to persons of various communities at village Dulepura, on the morning of the 24th May, that a vote and a daughter should only be given by a Jat to a Jat. As already observed, it is to us inconceivable that a responsible congress leader should make such an exhortation openly at an assemblage of persons of all communities and in the presence of a number of high officers. In his evidence Shri Kumbha Ram has denied having addressed any meeting except at Khandela or having even canvassed support for the congress candidate at any other place.

P.W. 22, Dwarka Prasad says that at a meeting held in the evening of the 23rd May at Khandela Shri Kumbha Ram exhorted Jat voters to always vote for a Jat candidate since gradually a Jatistan was in the course of formation. This evidence has to be discarded for the same reasons as in the case of P.W. 14.

There is, therefore, no reliable evidence in support of sub-issue (b). Our finding on both parts of issue No. 3 is, therefore, in the negative and against the petitioner.

Issue No. 6 does not arise in view of our finding on Issue No. 5.

Issues Nos. 5 & 6.—

“(5) Whether respondent 1 himself or through his agents committed the corrupt practice of procuring and abetting and attempting to procure persons to personate at the election at several polling stations as stated in Schedule No. III?

(6) If the answer to issue No. 5 be in the affirmative whether the result of the election was materially affected thereby?

These issues relate to the allegations contained in para. 7 of the petition read with schedule III in which the names of eight voters who are said to have been personated and of the persons who personated at Agloi Polling Station on the polling day have been given. No evidence, however, has been led on behalf of the petitioner on issue No. 5, nor were any arguments addressed to us on this issue. Our finding on issue No. 5 is, therefore, in the negative, i.e. against the petitioner.

Issue No. 6 does not arise in view of our finding on issue No. 5.
Issues Nos. 7 & 8.—

“(7) Whether respondent No. 1 committed a corrupt practice by publication of a poster, reproduced in schedule No. IV by his agents or with the connivance of himself and his agents believing the statements contained or implied in the poster to be false or, at any rate, not believing them to be true and whether the poster related to or was understood to relate to the personal character and conduct of the petitioner?

(8) If the answer to issue No. 7 be in the affirmative what is its effect on the result of the case.”

Issue No. 7 is one of the issues to which great importance has been attached at the time of arguments and there is considerable evidence on either side on this point. The issue is based on para. 8 of the petition in which it is alleged that respondent No. 1 published false statements relating to the personal character and conduct of the petitioner by issuing posters and getting them published by his agents or with the connivance of himself or his agents, believing them to be false or at any rate not believing them to be true. It is further alleged that the publication of the said statements had actually resulted in a large number of electors being misled and not voting for the petitioner. As to the details of the statements, the manner of their publication and other particulars a reference was made, in the paragraph to schedule IV. That schedule, however, contains only the following particulars.

"A poster with the photo of the petitioner was published showing as to how the petitioner commits atrocities on the cultivators".

The contesting respondent's reply to para. 8 is as follows:—

"Para. 8 of the petition is denied. The respondent or his agents did not publish any false statement. The poster referred to in schedule IV has no reference to the petitioner. There is no photo of the petitioner in the alleged poster."

It is necessary to state here that no copy of the alleged poster was filed along with the petition and it was only after the filing of the respondent's written statement on 12th January 1954, that the poster Ex. P.W. 1/1 was filed by the petitioner. The poster which has been first referred to in the evidence of P.W. 1 Brahmdudd contains the caricature of a bearded and short statured Rajput, shown as whipping a tenant tied to a tree while a bearded Rajput Sardar with a turban tied on his head and wearing a typically Rajput 'Achkan' and with a sword hanging by his waist is shown on another side seemingly giving a direction to the aforesaid Rajput who is whipping the tenant. A woman who may be understood to be the tenant's wife is shown as lying at the foot of the Rajput Sardar as if praying for mercy. According to P.W. 1, who worked as an agent for the petitioner during the bye-election, the Rajput Sardar depicted in the poster is the petitioner himself while the other Rajput depicted in it is an employee of the petitioner. The petitioner himself as P.W. 34 has stated that the picture of the Sardar in the poster was of a Rajput Jagirdar and that propaganda was being carried on, on behalf of respondent No. 1 that the Jagirdar of Danta (Petitioner) was not as good a man as he looked but had been in the habit of subjecting peasants to maltreatment of which photographs had been taken and that such a case of maltreatment was represented in the poster. He has further stated that he always keeps a sword hung in the manner shown in the poster. According to the petitioner and many of his witnesses including P.W. 1, P.W. 3, P.W. 4, P.W. 5, P.W. 7, P.W. 8, P.W. 14, P.W. 15, P.W. 16, P.W. 17, P.W. 20, P.W. 23, P.W. 24, P.W. 25, P.W. 27, P.W. 28, P.W. 29, P.W. 31, posters similar to Ex. P.W. 1/1 were exhibited not only at prominent places at Khandela but also at villages throughout the constituency, and were particularly exhibited and used at certain election meetings held at Khandela on behalf of the Congress. Madan Lal P.W. 4, who alleges himself to have been a paid worker of the Congress organisation during the bye-election on a wage of Rs. 3 per day plus food has stated that one of the duties assigned to him was to affix posters at different places at Khandela and while doing so to deliver a short speech explaining to the people collecting there that the Thakur Sahib depicted in the poster, who was none other than Th. Madan Singh (Petitioner) was a 'Badmaash' habituated to commit atrocities such as depicted in the poster and that the other Rajput depicted therein was the Thakur's A.D.C. while the man tied to the tree was a cultivator. The witness has also named certain villages in which the posters were affixed by him. Shambhu Singh P.W. 29 who alleges having worked practically as an A.D.C. to the petitioner and to have moved throughout with the petitioner during his tours of the constituency during the bye-election, states that the Rajput depicted in the picture as holding the arm of the woman lying on the ground and beating her was a representation of himself and was generally understood by the villagers as such. A photograph of this witness has been produced as Ex. P.X. to prove the alleged resemblance between the witness and the Rajput employee depicted in the picture. No photograph of the petitioner has, however, been filed.

On behalf of the petitioner, it was argued that the exhibition or publication of the poster in question had been practically admitted by the respondent through his written statement in which, obviously, the poster referred to could have been none other than the one mentioned in schedule IV annexed to the petition. We may observe here that the description of a poster as given in schedule IV could be

made applicable to the poster Ex. P.W. 1/1 but for the misleading word 'photo' if it be assumed that the Rajput Jagirdar depicted in it is none other than the petitioner himself. As conceded by learned counsel for the petitioner during arguments, the proper word to be used instead of the word 'photo' should have been caricature. As to the respondent's reply to para. 8 of the petition it begins with a general denial of the allegations in that para. of the petition and with a specific averment to the effect that the respondent or his agents did not publish any false statement, but the material words in the written statement are that "the poster referred to in schedule IV has no reference to the petitioner." There is also a denial that there was any 'photo' of the petitioner in the alleged poster. In so far as the last denial is concerned, it is obviously correct in the strictly limited sense that there is no photograph as such of the petitioner in Ex. P.W. 1/1. From the material portion of the written statement, however, it is difficult to resist the conclusion that, although no copy of the poster had been filed with the petition, the respondent did understand the poster referred to in schedule IV of the petition as the one intended by the petitioner himself i.e. Ex. P.W. 1/1 which was produced subsequently. But the respondent's denial to the effect that the poster in question had no reference to the petitioner could only mean that it was not the petitioner personally who was depicted in the poster. The general denial also could certainly mean among other things that the statements implied in the publication of the poster were not false.

In the course of evidence, however, the use of any poster like Ex. P.W. 1/1 has been denied on behalf of respondent No. 1. Shri Chandan Singh R.W. 10 son of the respondent who was the main worker on his behalf has denied that any poster like Ex. P.W. 1/1 was displayed on behalf of the Congress party during the bye-election. According to him the only posters that were displayed on the respondent's behalf were posters like P.W. 10/1 apart from some posters of an old stock lying at the party headquarters which contained a picture of Shri Jawaharlal Nehru and of a pair of bullocks in the corner. The respondent himself has made a similar statement as R.W. 9. Chaturbhuj R.W. 19 who was one of the important Congress workers at Khandela and who has been named by Madan Lal P.W. 4 himself as one of the local Congress leaders, who had joined in employing him, has denied that P.W. 4 (Madan Lal, son of Shri Narain) was employed as a Congress worker for the bye-election. Bishambher R.W. 5 another local prominent worker on behalf of the Congress has also denied that P.W. 4 worked during the bye-election as a Congress worker.

Shri Kapil Deo R.W. 8 who is an M.L.A. and who worked on behalf of the Congress during the bye-election has also denied that any posters like Ex. P.W. 1/1 were displayed anywhere in the constituency or referred to in any of the Congress meetings at Khandela. According to the witness such posters were displayed only during the general elections and 500 of them were sent during these elections by the Provincial Congress Committee to Neem Ka Thana 'C' Constituency which the witness represents in the Rajasthan Legislative Assembly.

Coming again to the nature of the poster Ex. P.W. 1/1 it is important to note that at the top of it there is an appeal in Hindi in banner head-lines in the following words:—

"For the sake of ending the tyranny of Jagirdars".

The appeal ends at the bottom in even bolder Hindi letters meaning "Vote for the Congress".

On the right side of the poster is shown a ballot box with a pair of bullocks depicted on it and above the box some hands have been shown dropping ballot-papers in it. On the face of it, therefore, the poster appears to have been designed to convey a strong appeal to the electors to vote for the Congress in order to end the tyranny of Jagirdars a typical example of which was shown in the poster by depicting the cultivator tied to the tree and the woman being dragged at the apparent direction of the Jagirdar by his employee. The statement false or true as implied in the poster, was therefore, directed primarily against the Jagirdars of the class which finds support from the evidence of Shri Kapil Deo (R.W. 8) that similar posters were distributed in large numbers during the general elections in the witness's constituency in Neem Ka Thana 'C' Constituency. The petitioner was admittedly not a candidate from Neem Ka Thana 'C' constituency during the general elections. Shri Kapil Deo has explained, in his evidence that in the poster, the bearded gentleman in 'achkan' was not intended to represent any particular Jagirdar and that the same poster was actually produced during the trial of an election petition before the Kotah Election Tribunal in the case of Jhunjhar Singh V. Bhairon Lal Kala Badal, as having been used by the successful respondent in

that case and its publication was held by that Tribunal to constitute a corrupt practice. The witness has also stated in cross-examination that posters like Ex. P.W. 1/1 were actually displayed in Neem Ka Thana 'C' Constituency during the general elections although there was no Jagirdar candidate opposing the witness since the Congress stands for abolition of Jagirdari and the poster represents that stand. We have actually sent for the file of the election petition Jhunjhar Singh V. Bhairon Lal Kala Badal from the records of the Kotah Tribunal and find that a poster similar to Ex. P.W. 1/1 was an exhibit in that case also on behalf of the petitioner of that case and its publication was found by that Tribunal to be a corrupt practice for quite different reasons. From this fact and from the facts disclosed in the evidence of Shri Kapil Deo, we find it impossible to believe that the poster Ex. P.W. 1/1 which from the printed certificate at the bottom in the left corner appears to have been issued under the authority of the publication section of the Provincial Congress Committee, could have been designed to contain any reflection on the personal character or conduct of the petitioner who during the general elections was neither a candidate from any constituency in Neem Ka Thana nor from Kotah. There is no evidence even to show that the petitioner held any prominent position or office, at the time of the bye-election or even during the general elections, in the Kshatria Parishad of Rajasthan, which is the recognised organisation of Jagirdars of Rajasthan. The Provincial Congress Committee could, therefore, have had no interest in particularly giving a caricature of the petitioner in its official poster meant for distribution in constituencies throughout Rajasthan. Even the petitioner has in his evidence as P.W. 34, stated that the poster contained the picture of a bearded Rajput Jagirdar, although he adds that certain remarks disparaging to him and with reference to the poster used to be made at the time of its publication or display. The definition of a major corrupt practice as given in Section 123 sub-section (5) of the Representation of the People Act, 1951, is as follows:—

- “(5) The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidates' election.”

In order to prove that through this poster, a false statement of fact was published by the respondent or his agents, it must, in the first instance be established that the picture of the Jagirdar depicted in the poster could have been of none else but the petitioner. Since no photograph of the petitioner has been placed on record nor have any particular points of resemblance been pointed out to us, we are unable to hold that the bearded Jagirdar shown in the picture is a resemblance of the petitioner himself. Nor are we satisfied that the picture of the bearded Rajput on the left side of the poster has any close resemblance to Shambhu Singh (P.W. 29) alleged A.D.C. of the petitioner whose photograph Ex. P.X. has been actually placed on record. In our view the caricature of the bearded Rajput to the left of the poster could be that of any typical Rajput since the form of the beard and of the turban shown in it used to be quite common amongst Rajputs of the old fashioned class and the facial features of the Rajput in the picture cannot be said definitely to tally with those of Shambhu Singh in Ex. P.X. The petitioner's case as stated in schedule IV annexed to the petition was specifically to the effect that the poster contained a photograph or (rather a caricature) of the petitioner. We cannot consider the petitioner's case on any other basis, in so far as this issue is concerned. If the picture in the poster is not that of the petitioner, as it could not have been from the facts proved in the respondent's evidence the petitioner cannot succeed on the mere allegation that the picture in the poster was represented to the elector to be that of the petitioner and was understood by the electors in that sense. An alternative suggestion to that effect which was made during arguments does not appear to be tenable in the circumstances of this case. Even in para. 8 of the petition, it was specifically stated that “the said false statements in the poster” related to the personal character and conduct of the petitioner and have actually resulted in a large number of electors being misled and not voting for the petitioner. In support of this view we may refer to the case of Syd. Hifazat Ali V. Mr. Mohammad Asgar reported at page 276 of the Doabia's Indian Election Cases Vol. 1 wherein it was held that facts not alleged specifically in the petition cannot be taken into consideration even if the evidence on the record regarding those facts could be held to be true. We may also refer to the case of Hari Shanker Bagla V. Mr. Kishan Chand Puri & Others reported at page 127 of the same volume of Doabia's Election Cases wherein it was held that where certain points were not pleaded and no issues were framed thereon, the

Tribunal cannot go into them. Moreover, as already shown by us, the proved publication of the same poster at the time of general elections in other constituencies where the petitioner was not a candidate makes it highly improbable that the poster could have related to the personal conduct or character of the petitioner or that the Jagirdar represented in the poster was none other than the petitioner. Considering all the proved circumstances connected with the poster, we can safely assume that the picture of bearded Rajputs in it to the right and to the left were intended to represent, respectively, a typical jagirdar and a typical employee of the jagirdar. We may also observe here that the carrying of the sword hanging from the side of the waist cannot be a peculiarity to the petitioner alone and was a well known practice amongst Rajputs and even amongst non-Rajput Jagirdars in the former States comprised in Rajasthan.

In view of the above conclusion it is not necessary for us to go into the evidence as to actual publication. We may, however, add that according to section 123, sub-section (5), it is necessary that the statement of fact alleged to have been published by the candidate or his agents should be proved to be false and to have been believed to be false or at least not believed to be true. No attempt has, however, been made to show that any statement contained in the poster was false and believed to be false or that it was not believed to be true.

It is significant that no witness has been produced from any of the places except Khandela where the publication of the poster is alleged in the evidence of the petitioner's witnesses from Khandela.

As to the alleged publication of the poster at Khandela itself, the witnesses are P.W. 1 Brahm Dutt, P.W. 2 Hari Prasad, P.W. 7 Roop Narain, and P.W. 31 Bhairon Singh. Of these, P.W. 1 says that the poster was exhibited at a meeting while P.W. 9 says that it was not so exhibited. P.W. 16 says that such a poster was brought for being affixed in his Mohalla but was not actually affixed. P.W. 31 says that he saw posters like Ex. P.W. 1/1 displayed at several prominent places in Khandela and heard people assembled at those places saying that the Rajputs depicted in the picture were the Thakur Sahib of Danta and the servant Shambhu Singh. It will thus be seen that the evidence as to publication of the poster at public meetings is conflicting while the evidence as to mere display of the posters at prominent places in Khandela does not lead anywhere, since apart from alleged impressions of those who saw the posters, there is no evidence of any actual false statement regarding the personal character of the petitioner.

In view of what we have stated above, our finding on issue No. 7 is to the effect that the poster in question did not relate to the personal character and conduct of the petitioner as alleged in the petition and that there is no evidence to show that the statement contained in the poster with respect to the petitioner as belonging to the Jagirdar class was false or was believed to be false or not believed to be true.

Issue No. 8 does not arise in view of our finding on issue No. 7.

Issues Nos. 9 and 10.

"Whether Shri Hira Lal Shastri being an agent of Respondent No. 1, used a motor vehicle No. RJV 81, for conveying voters from village Gurara to the polling station Fatehpura on the 24th May, 1953, and a corrupt practice was thereby committed by Respondent 1?"

(10) If the answer to issue No. 9 be in the affirmative, what is its effect on the election?"

These issues are based on para. 9 of the petition in which it is alleged that Respondent No. 1 and his agents procured vehicles for the conveyance of electors to the polling stations and back to their places. Schedule V annexed to the petition was referred to as containing the particulars of the corrupt practice. In that schedule it is stated that Shri Hira Lal Shastri agent of Shri Ladu Ram respondent used Car No. RJV 81, for conveying ten voters from village Gurara to the polling station Fatehpura on the 24th May, 1953. The respondent in his written statement denied the allegations contained in para. 9 of the petition and specifically pleaded that Shri Hira Lal Shastri was not the polling agent of the respondent at Fatehpura polling station on the 24th May and that Shri Hira Lal Shastri did not carry any voters from any village to the Polling Station Fatehpura in any car.

Learned counsel for the petitioner relied during arguments on this issue only on the evidence of P.W. Kalyan Singh and P.W. 30, Chain Singh. The evidence of P.W. 8 is only to the effect that voters were brought in Thikeria Bus Service

and were left on the out skirts of village Agloi by the Congress workers at the time of polling. The witness further states that he made no complaint in writing of this but verbally complained to the police. In cross-examination he stated that it was because Ramchshwar Dass a congress worker at the election was in the Thikeria Bus Service lorry along with the voters that he concluded that the voters were brought by him in that lorry; that the voters had been brought in the lorry from Bussipura and Kanwarpura villages; that he did not remember the plate number of the lorry that was used for carrying the voters nor the name of the driver of the lorry. It will be seen that this evidence is entirely inconsistent with the particulars given in schedule V in regard to the name of the village from which the voters were brought and the name of the polling station to which they were brought. Moreover, in that schedule, it is a car number RJV 81 which is alleged to have been used while in the witnesses evidence it is stated to be a bus of the Thikeria Bus Service of which the number could not be given by the witness. According to the witness, it was Rameshwar Dass a congress worker who was understood by him to have brought the voters in the motor vehicle while in schedule V, the name of the respondent's agent is given as Hira Lal Shastri. The evidence of this witness, is therefore useless. Chain Singh, P.W. 30, who was a polling agent of the petitioner at Fatehpura during the bye-election states that on the polling day 11 to 12 voters of village Gurara were brought in a motor vehicle by Shri Hira Lal Shastri polling agent of the respondent and were taken down at a short distance from the polling station at Fatehpura. The witness, it is stated, came out of the polling station on getting information about the commission of this practice and then made a report to the presiding officer, a certified copy of which is Ex. P.W. 30/1. We may observe here that the original of this document which is said to have been in the witness's own hand writing was not produced by the Returning Officer in spite of two notices sent to him by the Tribunal. It was in these circumstances that the copy Ex. P.W. 30/1 was admitted in evidence. Coming again to P.W. 30's evidence, it was only in cross-examination that he stated that the voters were brought in a lorry bearing the number RJV 81 but he could not say whether it was a private lorry or a public bus nor could he give the name of the person who gave him the information nor the names of the alleged voters of village Gurara who were brought in the lorry or their numbers in the voter's list. The witness admitted that he made no attempt to ascertain the numbers of the voters on the voters' list since he did not know their names, although he could have ascertained these particulars.

Ex. P.W. 30/1 as already stated is a copy of the complaint, dated the 24th May, 1953, certified as a true copy by the Returning Officer. In the complaint which is addressed to the Presiding Officer, it is stated that Shri Hira Lal Shastri agent of Shri Laduram Chaudhary, Respondent No. 1, who has got car No. RJV 81 of Sikar has brought ten voters of village Gurara in that car and left them near the polling station, which is prohibited under the law and necessary action may be taken in the matter. The motor vehicle is said to have left at 3-25 p.m.

On behalf of the respondent the witnesses that have given evidence on this point are R.W. Purkha Ram R.W. 4, Balbir Singh, M.L.A., R.W. 9, Respondent No. 1 R.W. 10, Chandan Singh son of the respondent, R.W. 15, Manmath Kumar Mishara, R.W. 1, was running a service bus from Khandela to Palsana at the time of the bye-election and used to drive it himself. He states that on the 23rd May while his bus was on the way from Khandela to Palsana, he saw car No. RJV 81 lying with one of the wheels of the car and some of its bolts broken. On the next day also, i.e. on the polling day, while plying the same bus from Khandela to Palsana he found the same car lying on the road in the same condition. In cross-examination the witness stated that the driver of car No. RJV 81 had asked him to inform the proprietor of the car, Shri Chandhi Prasad of Sikar, that his car had broken down on the way, having given the witness the number of the car as 81. R.W. 4, Balbir Singh is an M.L.A. who states having worked for the Congress from the 22nd May as incharge of three polling stations namely Jankipura, Agloi and Fatehpura. He states that although he started his work at Khandela, he had to go subsequently to Jankipura, Agloi and Fatehpura since Mr. Shastri who was originally incharge of congress work in that area could not proceed there on account of the break down of his car. R.W. 9 Respondent No. 1 has simply admitted in cross-examination that Shri Hira Lal Shastri was incharge of Fatehpura polling station, but it is clear from his evidence that the entire organisational work in the bye-election was being done through his son Chandan Singh and the respondent was a mere figurehead. R.W. 10, Chandan Singh has only stated that no motor vehicles were used, on behalf of the respondent, for bringing voters to the polling stations and that car No. RJV 81 was a Ford car belonging to Shri Chandhi Prasad which the witness had brought from Sikar during the bye-election but the car broke down on the 23rd May near Daduwala

village while it was being used by Shri Hira Lal Shastri on behalf of the respondent. In cross-examination he further stated that he saw the car in question in a broken down condition at Daduwala Ka Bas due to bolts of a wheel of the car having been broken. R.W. 15, Shri Manmath Kumar is an advocate of Sikar who also states that while working in the constituency during the bye-election on behalf of the respondent, he saw Shri Chandi Prasad's station wagon lying in an unworkable condition near Dadu Ka Bas between the 22nd and the 24th May. From the evidence of R.W. 4, Balbir Singh, M.L.A. and Shri Manmath Kumar Mishra, Advocate who are respectable witnesses coupled with that of the Bus driver Purkha Ram, R.W. 1 and Shri Chandan Singh, R.W. 10, it does seem to be a fact that car No. RJV, 81 had broken down near Daduwala village while being used by Shri Hira Lal Shastri for the respondent's work. From this it does not necessarily follow that Shri Hira Lal Shastri was completely disabled to work as an agent of the respondent on the polling day since if the car broke down on the 23rd May, Shri Hira Lal Shastri could not have remained stuck up in the car even on the following day nor is there any evidence to this effect, but I find no reason to disbelieve the respondent's evidence that car No. RJV 81 was not in a workable condition on the polling day and to that extent atleast the allegation in schedule V of the petition and in the complaint Ex. P.W. 30/1 could not have been correct. The discrepancy between the evidence of P.W. 8 and P.W. 30 as to the name of the respondent's agent who was alleged to have brought the ten voters on the motor vehicle throws further doubt on the correctness of the complaint. Moreover, as already pointed out, it was for the petitioner's agent Chain Singh, P.W. 30 to have found on the spot the names and the numbers on the voters' list of the ten voters alleged to have been brought on the motor vehicle and without such specific details the complaint loses much of its value. It was the duty of the petitioner to have produced the Presiding officer of the Fatehpura Polling Station in order to enable the Tribunal to find out what happened to the complaint. As the matter stands we are unable to hold the allegation as proved since a charge of a corrupt practice like this has to be judged by the standards of evidence in a criminal trial.

Our finding on issue No. 9 is, therefore, in the negative while issue No. 10 does not arise.

Issues Nos. 11 and 12.

"These issues which relate to the return of election expenses referred to in schedule VI were not pressed during arguments and the finding on issue No. 11 must, therefore, be against the petitioner while issue No. 12 does not arise.

Issues Nos. 13, 14, 20 and 22.

"(13) Whether Respondent No. 1 committed a corrupt practice by procuring himself or through his agents the assistance of Government servants named in schedule VII to further the prospects of his election?

(14) If the result of Issue No. 13 be in the affirmative, what is its effect on the case.

(20) Whether a car of the Rajasthan Government Garage and a jeep Car No. RJV 11 were used by Shri Kumbha Ram Minister for Industries, and Shri Chandan Mal, Deputy Minister, Rajasthan Government and by the agents of Respondent No. 1 for the respondent's propaganda work during the elections.

(22) If the answer to Issue No. 20 be in the affirmative, what is its effect on the election."

The above issues which arise from paragraphs 11, 16 and 17 of the petition, are bound up with each other and will, therefore, be disposed of as a single point. In para. 11, it is stated that the respondent himself and through his agents took the assistance of a number of Government servants as specified in schedule VII to further the prospects of his election. In para. 16, it is alleged that "Shri Kumbha Ram, Minister for Industries and Commerce and Shri Chandan Mal, Deputy Minister, Rajasthan Government propagated for Respondent No. 1 used the national flag and the car of the Rajasthan Government Garage and this car was freely used by the agents of Respondent No. 1 during the elections, for the propaganda work of Respondent No. 1". In para. 17 it is further alleged that "a jeep car No. RJL 11 with the national flag was used, during the elections for Respondent No. 1 and Shri Kumbha Ram and Shri Chandan Mal toured the constituency in the State car with the S.P. Sikar, S.D.M. Sikar, Shri Ram Narain, Election Clerk and Shri Kumbha Ram addressed the people at the aforesaid village, telling them that Government officials were with him as his orderlies and in case they voted for Respondent No. 1, they will be favoured by the District.

Officials. It is further stated in para. 17 that the names of the villages in question are given in schedule VII. The particulars relating to para. 17 are, however, given in schedule VI which was subsequently corrected by the petitioner as schedule VII. In this corrected schedule VII which also seems to relate partially to para. No. 18 of the petition and to Issue No. 21 there is a list of five Government officials and the particulars of assistance rendered by them have been given in column 3 while certain villages have been mentioned in column 4. The officials named are (i) Shri Chand Behari Lal S. P. Sikar, (ii) Shri Jai Nath Kunzru, Collector Sikar and Returning Officer, (iii) Shri Ram Narain, Election Clerk, Sikar (iv) Shri Narendra, Reader to S. P. Sikar and (v) Shri Gopi Nath Gupta, S. D. M. Sikar. The assistance alleged to have been rendered by these officials is firstly that they toured the constituency with Shri Kumbha Ram in Car No. RJV 11 belonging to the Collector with the national flag on and actively assisted Shri Kumbha Ram and Shri Chandan Mal to impress on the voters that in case the electors voted for Respondent No. 1, they would be favoured by these officers; secondly it is alleged that these officers allowed the use of buses Nos. RJL 197, 202 and 243 (which is an allegation really connected with Issue No. 21) and thirdly, that Shri Ram Narain and Shri Narendra actively canvassed for Respondent No. 1.

In column 4 of the schedule, the names of the villages that these gentlemen are alleged to have toured are given as Khandela, Kairpura, Dulhapura, Ralawata, Samrathpura and Hod.

In his written statement Respondent No. 1 simply denied the allegations contained in para. 16 and 17 of the petition.

In this connection the petitioner has examined Shri Duli Chand, P.W. 19, a clerk of the Rajasthan Motor Garage who has stated that a Jeep Car No. RJL 1236 of the State Garage was allotted to the Industries Minister from the 22nd to the 25th May, 1953, for his Khandela Tour. The relevant extract from the Log Book at page 15 is Ex. P.W. 19/2 and the driver who was driving the car according to the entry in the log book was Amar Singh. As will be seen from the above narrative, this jeep car namely RJL 1236 has been mentioned neither in para. 16 nor in 17 of the petition nor even in schedule VII annexed to it. There is thus a complete confusion in the petitioner's pleadings as to the car actually alleged to have been used by Shri Kumbha Ram and Shri Chandan Mal for the propaganda work of Respondent No. 1. During argument however, Shri Hari Prasad Gupta, learned counsel for the petitioner stated categorically that the car meant by the petitioner to have been used by Shri Kumbha Ram was really the same in paragraphs 16 and 17 that the number of the Jeep Car given in the petition and in schedule VII as RJV or RJL 11 was wrong and that the correct number of the jeep car in respect of the allegations contained in both paragraphs may be taken as RJL 1236 and finally that the allegation as to the use of the jeep car No. RJV 11, might be treated as given up. It follows that there is now no allegation that Shri Chandan Mal, Deputy Minister used any separate State car for the propaganda work of the respondent. Shri Jai Nath Kunzru, P.W. 10 who was the Collector of Sikar and the Returning Officer for the Neem Ka Thana 'A' Constituency during the bye-election, has stated that he along with Shri Chand Beharilal Superintendent of Police, Sikar District went along with Shri Chandan Mal who was the Deputy Law Minister, for inspection of polling booths in the same jeep; that the Election Department was then under the Law Minister and Shri Chandan Mal came for inspection, in his capacity as the Deputy Minister for Elections. Shri Chand Behari Lal, P.W. 13 while corroborating Shri Jai Nath Kunzru has stated that the jeep car in which Shri Chandan Mal, the Collector and the witness were travelling, belonged to the Anti Locust Department and was being used by the Collector for the inspection, having been already with him in connection with Anti Locust Work. The witness further stated that he had gone to inspect the police arrangements at the polling booths on the 23rd May, 1953. Shri Ram Narain P.W. 11 who was the clerk in charge of election work in the office of the returning officer has also stated that he was travelling with the Returning Officer and the Superintendent of Police, during an inspection of Polling Stations at Khandela, Kairpura, Chowkri and Dulebpura, but according to him Shri Kumbha Ram, Shri Mehta, the Chief Electoral Officer, and Shri Chandan Mal along with the Returning Officer were travelling in another Jeep which preceded the Jeep occupied by the witness. He further stated that only the polling staff used to collect whenever the party stopped at a polling station and that Shri Kumbha Ram did not speak to the polling staff when the Jeep stopped although he also inspected the polling arrangements. Shri Ganpat Rai, P.W. 12 who was the S.D.O. Neem Ka Thana at the time also visited the polling stations during the same trip, as in charge of law and order arrangements during the bye-election and he also gives evidence similar to Shri Ram Narain. In so far as these witnesses are

concerned, who have appeared on behalf of the petitioner himself, there is no evidence that either Shri Chandan Mal, Deputy Minister or Shri Kumbha Ram, Industries Minister or the Returning Officer Shri Jai Nath Kunzru, or the S. P. Shri Chand Behari Lal or the Election Clerk, Shri Ram Narain, or Shri Ganpat Rai S.D.M. did any propaganda work on behalf of the respondent or of any one else during the particular trip at any of the villages visited during the inspection. It was obviously a trip intended for the inspection of polling booth arrangements by the Deputy Minister for election and by the District Officer concerned and there is no evidence that the trip was utilised for any other purpose, by any of the officials or ministers. There is also no evidence whatsoever, that any of the officials made any attempt during that trip, as alleged in schedule VII to assist any of the ministers in impressing on any electors that in case they voted for the respondent, they would be favoured by these officers. In fact as already pointed out, there is no evidence that any electors collected at any of the polling stations visited by the Ministers and the officers in question during that trip. The allegation in para. 17 that Shri Kumbha Ram addressed the people collected at the aforesaid villages telling them that Government officials were with him 'as his orderlies and that in case they voted for the respondent, they would be favoured by the State Officers, finds no support from the evidence of the petitioner's own witnesses narrated above. In fact it is a fantastic allegation that any responsible Minister accompanied by so many High Officials of the District and by the Chief Electoral Officer should have told an assemblage of persons that the officers were with him as his orderlies. Shri Kumbha Ram, R.W. 18 has himself stated that Shri Chandan Mal (Deputy Minister) came to meet him at Khandela and asked him to accompany him to which the witness agreed; that a few polling stations were visited by the witness along with Shri Chandan Mal and the Chief Electoral Officer; that he did not get down at most of the polling stations visited; that there was no question of crowds collecting at any of the polling stations excepting of course those persons who had been working at those polling stations. No witnesses from any of the villages visited during the trip in question have been produced on behalf of the petitioner.

Leaving aside for the present, the question of the real object of Shri Kumbha Ram's visit to Khandela on that occasion and the question as to what he actually did at Khandela proper or as to whether the State car brought by him from Jaipur State Garage was used by him or by any of the respondent's agents for the respondent's propaganda work, we have no hesitation in holding that there is no evidence in support of any of the other allegations general or specific contained in paragraphs 11, 16 and 17 of the petition read with Schedule VII.

As to the allegation connected with the use of the State Jeep No. RJL 1236 by Shri Kumbha Ram or by any of the respondent's agents for his propaganda work, an objection was rightly raised during arguments by the respondent's learned counsel that the petitioner should not be allowed to change his original stand completely with respect to the number and nature of the car alleged to have been used by Shri Kumbha Ram or by the respondent's agents. In this connection learned counsel for the respondent has referred to certain election cases reported in volume I of Doabia's Indian Election Cases as pages 46, 127, 276 and 316 out of which we consider it necessary to refer only to the case of *Syd. Haifazat Ali v. Mr. Mohammad Asgar* at page 276 of the volume wherein the evidence as to certain facts not specifically alleged in the petition was not considered by the Commission. These facts related to an alleged feeding by the respondent at a certain place not specified in the relevant schedule of the petition although there was a reference to feeding at two other specified places. It was in these circumstances that evidence on record as to the feeding at the unspecified place was not considered by the Commission. In the present case the petitioner never referred specifically to jeep No. RJL 1236 either in the petition or in schedule VII and named a jeep of quite a different number namely RJV or RJL 11 in para. 17 and schedule VII read in the light of his explanation during arguments. The petitioner cannot, therefore, be allowed to change his plea subsequently. The evidence as to use of RJL 1236 for any purpose whatsoever can, therefore, be justifiably excluded from consideration.

We may, however, observe that the use of this particular jeep i.e. RJL 1236 by either Shri Kumbha Ram or by any of the respondent's agents for the latter's propaganda work is not proved by any satisfactory evidence, apart from the mere fact that Shri Kumbha Ram admittedly travelled by that Jeep from Jaipur to Khandela on that occasion. In connection with the use of this particular car, the most important evidence obviously is that of the driver of the car Shri Amar Singh, R.W. 16 and of Choudhary Kumbha Ram himself (R.W. 18). R.W. 16 has asserted that after reaching Khandela at about 8 p.m. on the 22nd May, by that Jeep and upto the time of the return journey on the same jeep on the 24th morning from Khandela to Jaipur, it was not used at all, that it remained throughout in the

witness's charge at Khandela and that even Shri Kumbha Ram did not move about in it even for attending any meeting at Khandela itself. Shri Kumbha Ram has also stated that the jeep by which he travelled to Khandela on the 22nd May was not used for election propaganda or for any other election work; that the car through out remained at Khandela in charge of the driver and was not taken out by any one else and that he himself did not use the car at all after reaching Khandela, excepting of course for the return journey. The witness has further stated that the car could not have been used even at Khandela since the nature of the streets of that place does not permit of the use of any such vehicle. Even Rawat Man Singh, P.W. 5 who is an M.L.A. and one of the most important witnesses of the petitioner has stated that soon after Shri Kumbha Ram's arrival at Khandela on the jeep car with the national flag on, he reported the matter of the use of the State car with the flag to the S.D.M., that the very next morning Shri Kumbha Ram started using another car and that the particular jeep, which had brought Shri Kumbha Ram to Khandela, was according to the witness's information sent back to Jaipur. The witness could not say, in cross-examination whether from the moment Shri Kumbha Ram reached Khandela the jeep car was lying idle. It can be gathered even from the evidence of this witness of the petitioner that the jeep Car No. 1236 RJL which took Shri Kumbha Ram from Jaipur to Khandela was in all probability not used at that place except for the return journey, whatever might have been the reason for this non-user. Presumably the other car referred to in Rawat Man Singh's evidence as having been used by Shri Kumbha Ram after reaching Khandela was the Collector's jeep utilised as already stated for the trip of inspections of the polling stations by the Deputy Law Minister. There is thus no satisfactory evidence that even RJL 1236 was used at Khandela or any other place by Shri Kumbha Ram or by any agent of the respondent for election work.

As for the object of Shri Kumbha Ram's visit to Khandela assuming for the sake of argument that he went there only to address an election meeting on behalf of the Congress candidate, which he admittedly did address, the further question that arises is whether he used that particular government vehicle for that particular visit with the prior knowledge of connivance of the respondent or of any of his agents. Even in para. 16 of the petition, it is not specifically alleged that the Government Garage car with the national flag on was used by Shri Kumbha Ram for the respondent's propaganda work with the latter's knowledge or connivance or with that of his agents. It would have been quite a different matter if the further allegation in para. 16 as to the use of the same jeep by the respondent's agents for his propaganda work had been proved but there is no evidence to that effect as already pointed out. In the circumstances the mere use of the state car by Shri Kumbha Ram for the journey to and from Khandela even if it was undertaken for addressing election meetings at Khandela, on behalf of the respondent can hardly make the respondent liable for this Act of Shri Kumbha Ram when there is no evidence and not even a specific allegation in the petition, that they journey was so undertaken with the knowledge or connivance of the respondent or his agents. On this point we may refer to a similar principle laid down in the judgment of the Jaipur Tribunal in the case of Rikhab Chand v. Ridhi Chand (Election Petition No. 11 of 1952). Even in paragraph 17, of in schedule VII there is no specific allegation that what Shri Kumbha Ram said or did during the tour of the constituency on Jeep Car RJL 11 was said or done with the knowledge or connivance of the respondent or any of his recognised agents. There is, moreover, no evidence that any of the respondent's agents or the respondent himself accompanied Shri Kumbha Ram during the trip.

As to the alleged use of the national flag on the state car on which so much emphasis has been laid in para. 16 and in the evidence of Rawat Man Singh, P.W. 5, we may point out that the allegation seems to be based on sub-section (5) of s.124 of the Act under which the use of or appeal to the national flag for the furtherance of the prospects of a candidate's election amounts to a minor corrupt practice. We are of opinion that the mere use of the national flag by a Minister for the initial journey to the constituency from his Headquarters does not amount to a use for the furtherance of the prospects of a candidate's election, as contemplated in the sub-section. Moreover, there is no evidence whatsoever that the alleged corrupt practice had any material effect on the result of the election or that the election was procured or induced by such a corrupt practice.

It remains now to deal with the effect if any of Shri Kumbha Ram's participation in the Congress meeting at Khandela and of his addressing the meeting. We, however, do not feel called upon to determine the question whether a Minister's addressing a political meeting in support of his party's candidate amounts u/s.124, sub-section (8) of the Act, to the obtaining or procuring by a candidate or his agent of assistance for the furtherance of the prospects of his election "from a person serving under the Government of the State." It is not

at all necessary in the present case for us to express an opinion on the question whether a Minister of the Government of the State is a person "Serving under that Government". The simple reason for this is that it never seemed to have been the petitioner's case, whether in the petition or even in his evidence, that the addressing of any meeting at Khandela proper by Shri Kumbha Ram by itself amounted a corrupt practice. The emphasis, throughout seems to have been on the alleged use of the national flag and of the state car for Shri Kumbha Ram's visit to Khandela of which the real object, according to the petitioner was the addressing of meetings and the canvassing of support for the respondent's election and not any inspection of the working of the Gota Industry at Khandela, as made out on behalf of the respondent. On that limited point, we have no hesitation in holding that the mere use of a state car for carrying any person to address an election meeting is not a corrupt practice under any provision of the Act. In this view of the matter, we need not deal with the arguments addressed to us on the question of the real or a vowed object of Shri Kumbha Ram's visit to Khandela during the bye-election.

For the foregoing reasons our findings on issues Nos. 13 and 20 are against the petitioner. Issues Nos. 14 and 22 do not arise in view of the above findings.

Issue No. 15.—"Whether the friends and well-wishers of Respondent No. 1 named in schedule VIII incurred unauthorised expenditure without the authority in writing of Respondent No. 1 for the purpose of promoting or procuring the election of Respondent No. 1 and whether the result of the elections was materially affected thereby."

This issue is based on para. 13 of the petition of which the language is similar to that of the issue. As to the details, reference is made in the paragraph to schedule VIII. That schedule however, contains only a statement that Shri Narbada Prasad, and Shri Bishweshwar Tiwari held meetings at Khandela, Ralawata, Rampura, Dharampura and Agloi. There is thus no averment in the petition as to how much expenditure, if any, was incurred in the holding of these meetings and no evidence has been led on behalf of the petitioner on this particular issue. In any case, there was no reference to the issue during argument by learned counsel for the petitioner. It may, therefore, be presumed that the allegation embodied in the issue was not pressed. The issue is, therefore, decided against the petitioner.

Issue Nos 16 and 17.—

"(16). Whether a meeting convened by the Rajasthan Ram Rajya Parishad on the 19th May, 1953, at Khandela in support of the petitioner's candidature was disturbed by armed supporters of Respondent No. 1, who uttered threats of dire consequences in case people voted for the petitioner and joined meetings convened in his support.

(17) If the answer to issue No. 16 be in the affirmative, what is its effect on the election."

The issue is based on paragraph 14 of the petition the contents of which are similar to those of the issue. It is further stated in that paragraph that this sort of undue influence practised by the agents of the respondent influenced the voters and they desisted, out of fear, from voting for the petitioner or voted for the respondent. The disturbance of a single election meeting of one party by supporters of another does not by itself amount to a major or even minor corrupt practice under the Act. It is only an electoral offence under S. 127 of the Act. It is, therefore, unnecessary for us to consider the evidence in regard to the alleged disturbance of the meeting in question except in so far as the use of undue influence by supporters of the respondent is alleged and referred to in the issue. We have thus only to see whether threats of dire consequences to those who voted for the petitioner or attended meetings convened in his support were uttered by armed supporters of the respondent and whether such threats had the effect of preventing any electors from voting for the petitioner. The petitioner's witnesses on the issue are P.W. 3 Bodu, P.W. 14 Dwarka Prasad Sharma, P.W. 22 Shri Dwarka Prasad No. 2 and P.W. 33 Shri Sobhag Singh. P.W. 3 Bodu does not speak of any threats uttered by disturbers of the meeting. He only says that a mahajan boy Kaluram came and extinguished the gas lamp burning at a meeting by throwing stones at it and thereafter, stones were pelted at the meeting from behind and cries of "Ram Rajya Parishad Ka Nash Ho" were heard at the same time, as a result of which the witness and others ran away from the meeting. P.W. 14 Dwarka Prasad also does not speak of the uttering of any threats at the meeting and only states that he and other co-workers of the Congress went to the meeting at the instigation of the respondent's son Shri Chandan Singh and Maliram and Richpal who

were in the party extinguished the gas lantern burning at the meeting by throwing stones at it after which the meeting dispersed. P.W. 22 Dwarka Prasad (No. 2) speaks of a hue and cry raised by disturbers of the meeting while Baba Uma Shanker was singing a 'Bhajan'. The hue and cry is alleged to have been to the effect that the Thakur Sahib of Danta was a Badmash indulging in debauchery and drinking; that no votes should be cast in his favour and that people should not be misled by man like the 'Baba'. This was followed by throwing of stones, an attack on the 'baba' himself by the aforesaid disturbers and the dispersal of the meeting after the lamp had been extinguished by one of the stones. The alleged huc and cry obviously does not amount to any threat although it may amount to aspersions on the character of the petitioner. P.W. 33 Sobhag Singh who is an employee of the petitioner's Thikana and was one of his workers at the bye-election alleges his presence at the meeting and says that while Baba Uma Shanker was addressing the meeting some forty persons came raising slogans that the Rajputs were allied with dacoits and when they ruled they used to commit atrocities on people and therefore did not deserve any support. In these alleged cries obviously, there is no direct or implied threat although there may be a wanton aspersion on the Rajputs as a class. But the witness further says that the disturbers were also saying that man like Baba Uma Shanker should not be allowed to address meetings. This was allegedly followed by the extinguishment of the petromax lamp by one of the stones thrown at the meeting and an assault on the Baba himself resulting in the breaking up of the meeting. But even the exhortation that man like Baba Uma Shanker should not be allowed to address meetings does not by itself amount to a threat. It may amount to coercion or intimidation or even violence to prevent the holding of a meeting, which as already pointed out, is merely an electoral offence, for which a person can be tried and convicted, but does not amount to an interference with the electoral right of voting so as to come within the mischief of S. 103 sub-section (2), or of section 100(1) clause (b). But leaving aside that question there are reasons to think that the witness has made a false statement regarding his alleged presence at the meeting. P.W. 22 Dwarka Prasad (No. 2) has stated that since there was no leading local worker of the Ram Rajya Parishad present at the meeting, he went after the disturbance to Sobhag Singh and Shri Bhairon Singh, workers of the Parishad and told them about the disturbance whereupon they went to the Thana for lodging a report. From this categorical statement of Dwarka Prasad, it is clear that Sobhag Singh could not have been present at the meeting. We cannot, therefore, place any reliance on the evidence of Sobhag Singh as to what happened at the meeting.

No copy of the alleged report said to have been made by Sobhag Singh & Bhairon Singh at the Thana regarding the disturbance of the meeting has been produced and we might infer from this that the report if produced would not have been helpful to the petitioner on this issue. In any case, as shown above, there is no evidence as to the exercise of undue influence, as alleged by the petitioner, by any agent of the respondent and our finding on Issue No. 16 is, therefore, against the petitioner. Issue No. 17 does not arise in view of our finding on Issue No. 16.

Issues Nos. 18 & 19.—

"(18) Whether at village Thikaria the respondent No. 1's agents attacked Thakur Jai Singh of Thikaria and threatened him to desist from helping the petitioner and also held out threats to voters of the said village to vote for Respondent No. 1 and not to vote for the petitioner.

(19) If the answer to issue No. 18 be in the affirmative, what is its effect on the election?"

These issues which are based on an allegation contained in para. 15 of the petition were not pressed by the petitioner's learned counsel during arguments, nor has any evidence been led on the point. The issues, are therefore, decided against the petitioner.

Issues Nos. 21 & 22.—

"(21) Whether Buses Nos. RJV 197, 202 and 243, which were reserved and paid for by the Government for election work by the Returning Officer were used for the propaganda work of Respondent No. 1.

(22) If the answer to issue.... No. 21 be in the affirmative, what is its effect on the election?"

Issue No. 21, as also Issue No. 22 in so far as it relates to issue No. 21 were given up by learned counsel for the petitioner during arguments. We, therefore, decided both the issues against the petitioner. In so far as it relates to issue No. 20, it has already been dealt with in connection with issue No. 20.

Issues Nos. 23 & 24.—

- (23) (a) Whether a list of 64 voters of village Fatehpura under the Polling Station Ralawata, was supplied by the Government Press to the petitioner and it was different from the official list maintained by the Returning Officer in respect of this village with the result that the voters of the petitioner's list were not allowed by the Polling Officer to vote while the petitioner could not approach the 169 voters of a different village Fatehpura, who were actually allowed to vote.
- (b) Which of the two Fatehpura is actually in the constituency?
- (24) If the answer to issue No. 23 (a) be in the affirmative, and if the wrong Fatehpura was included in the Electoral Roll, what is its effect on the election?"

These issues are based on para. 19 of the petition in which it is alleged that the voters of village Fatehpura who were included in the voters' list No. 295 supplied to the petitioner from the Government Press were not allowed to vote by the Presiding Officer while the voters of another Fatehpura were allowed to vote with the result that about two hundred voters who would have cast their votes in favour of the petitioner were prevented from voting. In his written statement, the respondent explained that in Neem Ka Thana 'A' Constituency, there are two villages by the name of Fatehpura one of which is near Gurara and is itself a polling station while the other Fatehpura situated near Ralawata was under the Ralawata Polling Station and that voters of both the Fatehpuras came and voted for the different candidates including the petitioner, and no voters from any other Fatehpura came to vote at the bye-election. The respondent further averred that the petitioner knew full well that no other Fatehpura was included in Neem Ka Thana 'A' constituency, and that the voters' list in the office of the Returning Officer showed no other Fatehpura as included in the Constituency. In his statement recorded under order 10 rule 1 C.P.C., counsel for the petitioner further explained that the list supplied to the petitioner by the Government Press contained a list of 64 voters only for village Fatehpura at page 295 and these voters were not allowed to vote while the voters of a different Fatehpura of which the list contains 169 voters whom the petitioner could not approach and canvass, were allowed to vote. The petitioner has filed a printed voters' list Ex. P.W. 11/2 of village Fatehpura on which the embossed leaf No. 295. The number of this village is given as 77 situated in Tehsil Turawati Neem Ka Thana and the list contains the names of 64 voters. P.W. 11 Ram Narain, Election Clerk of the office of the Returning Officer has explained that there are three villages by the name of Fatehpura in Neem Ka Thana (Sub-Division) of which only two bearing the serial Numbers 27 and 36 are situated in the Neem Ka Thana 'A' Constituency but the list of the two villages that the Returning Officer had initially received from the Chief Electoral Officer for the bye-election were those of Fatehpura village No. 77 and Fatehpura village No. 36 i.e. to say the electoral roll for village No. 77 was wrongly received in place of village No. 27. This Fatehpura village No. 77 is really included in Neem Ka Thana 'C' Constituency and the error having been discovered in the office of the Returning Officer before the bye-election, a report was made to the Chief Electoral Officer as a result of which the correct electoral list for Fatehpura village No. 27 was received in the office considerably before the bye-election. The witness, however, could not give the exact date on which the correct list was received but he did state that the correct list was duly supplied to the Presiding Officer of the Ralawata Polling Station on the 18th May, since the votes of Fatehpura village No. 27 were to be cast at that Polling Station. According to the witness, the report to the Chief Electoral Officer about the error was made atleast a month before the polling day and the correct electoral roll i.e. the one for village No. 27 was received within two or three days but no steps were taken by the Returning Officer to inform the candidates about the issue of the substituted and correct list nor about the fact that originally a wrong list had been issued. The correct electoral roll in the record of the Returning Officer is Ex. P.W. 11/1. In cross-examination, the witness admitted that the electoral roll Ex. P.W. 11/2 for village Fatehpura No. 77 was included in the Neem Ka Thana 'C' constituency at the time of the General Elections and was not at that time included in the 'A' constituency. In his evidence the petitioner P.W. 34 states that he purchased two copies of the electoral roll of the constituency from the Government Press at Jaipur through Shri Roop Narain M.L.A. of which the receipts are Ex. P.W. 33/2 and P.W. 33/3. In cross-examination he admitted that he did go, during his election campaign to the correct Fatehpura village (No. 27) but on comparison with his copy of the electoral roll he discovered that the names of voters given in the roll were not those of the correct Fatehpura, but of another Fatehpura which is included in Neem Ka Thana 'C' Constituency. He also went to the

Fatehpura village of Neem Ka Thana 'C' Constituency. He further admitted that although he did not personally approach the Returning Officer for remedying the defect in the electoral roll, his office at Khandela had written to the Returning Officer at Sikar quite early about the error in the Fatehpura electoral roll. He has also admitted that it was on the very first visit to the correct Fatehpura village that he had discovered the error about the electoral roll, and had several occasions subsequently to pass through that village during the campaign and ask for the support of the people there and that although no reply was received by his office at Khandela on the representation made by him as to the error in the electoral roll, he did not approach the Returning Officer personally because he depended upon his office to get the error corrected by correspondence and was also too busy in the election campaign which was then in full swing.

P.W. 33 Sobhag Singh who is one of the main workers of the petitioner, although he tries to put a different complexion on this episode, had also to admit that in the very beginning of the campaign he did go to the right Fatehpura village No. 27 and discovered that the list of voters supplied to the petitioner was not of that village. He has stated however, that in the absence of that list, the petitioner's workers were unable to distribute slips in village Fatehpura No. 27 although the voters were approached and the result was that none of the voters of that village could cast votes in favour of the petitioner. He has further stated that the voters of village Fatehpura No. 27 did come to the Polling Station at Ralawata to cast their votes but were unable to do so.

No witness has been produced from village Fatehpura No. 27 to prove that any electors from that village were unable to vote for the petitioner because slips could not be distributed to them by the latter nor has any witness been produced from village Fatehpura No. 77 to prove that they came for casting their votes inspite of the error having been discovered. The petitioner could easily have proved from the records of the Returning Officer the figures of the actual number of votes received by each candidate from Fatehpura village No. 27 at the Ralawata Polling Station but he did not care to do so inspite of the fact that attention of learned counsel was drawn by the Tribunal to the necessity of proving these figures from the record. Without such evidence, it is not possible for the Tribunal to come to a definite conclusion as to whether the error in attaching a list of electors of the wrong Fatehpura to the electoral roll materially affected the result of the election. It has been argued on behalf of the petitioner that the failure of the Returning Officer to give timely intimation to the petitioner of the admitted error in the electoral roll with respect to one complete village was a clear non-compliance with the rules made under the Act. But assuming that there was any such non-compliance, the election of a returned candidate can be declared u/s. 100 sub-section (2) clause (c) to be void only if the Tribunal is of opinion that the result of the election had been materially affected by the non-compliance. According to the evidence of Shri Ram Narain P.W. 11, Election Clerk, the corrected electoral list preserved in the office of the Returning Officer was open for inspection by all concerned up to a specified date and even certified copies of the lists could be supplied on payment of fees. Since the electoral roll had been corrected about a month before the polling day according to the evidence of P.W. 11 and since the petitioner himself had admittedly discovered the error in the very beginning and had written to the Returning Officer about it, he could have inspected the corrected list in the office of the Returning Officer and obtained a certified copy of the corrected list, well in time.

According to the petitioner's evidence he obtained two copies of the printed electoral roll from the Government Press at Jaipur but it has not been shown to us that the Government Press in question was the place designated by the State Government under sub-rule (6) of rule 24 for the deposit of printed copies of the final electoral roll of the constituency. In the circumstances we cannot presume that the Government or the Returning Officer was directly or indirectly responsible for the initial error in regard to the Fatehpura electoral roll.

Accordingly our finding on the first part of issue No. 23(a) is that, although the list of 64 voters of village Fatehpura which was purchased by the petitioner from the Government Press was different from the corrected list in the office of the Returning Officer and although it was natural that the voters of the list of village Fatehpura No. 77 Ex. P.W. 11/2 should not have been allowed by the Presiding Officer of Ralawata Polling Station to cast their votes if they at all went there for voting, it is not proved that the petitioner could not approach the 169 voters of the correct Fatehpura village No. 27 for canvassing nor is it proved that the voters of Fatehpura village No. 27 actually abstained from voting for the petitioner or that if they did so it was the result of the error in the petitioner's copy of the list. In fact the petitioner admittedly approached the voters of the Fatehpura village No. 27 from the very beginning.

As to issue No. 23(b) the parties were agreed during arguments that village Fatehpura No. 27 and not Fatehpura village No. 77 forms part of Neem Ka Thana 'A' Constituency and we find accordingly.

On issue No. 24, we find that the petitioner has been unable to prove that the initial inclusion of the wrong Fatehpura in the petitioner's copy of the electoral roll had any material effect on the result of the election.

Issues Nos. 25 & 26.

"(25) Whether the petitioner's agent, Shri Sobhag Singh while going to distribute slips to voters of Dulahpura was taken into custody by the Sikar Police at the instance of the respondent's agent Shri Chaturbhuj and whether, as a result of the arrest, the slips could not be distributed to about 200 voters of Dulahpura and they were deprived from casting their votes in favour of the petitioner.

(26) If the answer to issue No. 25 be in the affirmative, what is its effect on the election."

These issues are based on paragraphs 20 of the petition of which the contents are similar to the subject matter of issue No. 25. In amplification of the allegations petitioner's learned counsel stated that the petitioner's agent in question was Sobhag Singh. Respondent No. 1 in his written statement has denied the allegation. Counsel for respondent No. 1 when examined on the point specifically denied that Sobhag Singh was taken into police custody and stated that Narendra Kumar, S.I. of Sikar Police only challaned a truck in the normal course of his duties but could not say whether the challan was at the instance of respondent No. 1's agent Chaturbhuj.

The petitioner's evidence on the issue consists of P.W. 15 Narendra Kumar S.I., P.W. 20 Bhagwan Sahai and P.W. 33 Sobhag Singh.

P.W. 15 Narendra Kumar, Sub-Inspector of Sikar Police states that while posted at Khandela during the bye-election, for looking after the arrangements at the polling stations there, he received a written report of Chaturbhuj Mahajan, whereupon under the Circle Inspector's directions, he checked a truck about which the allegation was that it was being used by the Ram Rajya Parishad for carrying voters between Rampura and Diara. The truck which was occupied by an agent of the petitioner along with five other persons was brought by the witness to Thana Khandela because, according to the witness, the truck driver had neither a permit nor a registration certificate nor was there any token display on the truck. Seven other persons who are stated to have been found standing near the truck at the time of the checking and who were also alleged to be voters ready for being brought on the truck were also brought along with the truck to the Thana at about 3 P.M. The witness found on interrogation of the 12 persons that the 5 occupants of the truck were not voters while the 7 persons found standing near the truck were voters. Who were to come on foot and were not intended to be brought on the truck. None of the 13 persons, according to the witness were arrested and they were all permitted to go after interrogation, the 7 persons standing near the truck having been found actually as bound for Khandela Police Station itself. The truck driver is stated to have been challaned subsequently and convicted.

P.W. 20 Bhagwan Sahai claims to have been a worker these during the bye-election on behalf of the Ram Rajya Parishad at Dulahpura, Ralawata, Hod and Padampura villages his duty having been to distribute slips apart from doing propaganda for the Parishad. On the polling day, according to the witness, he had sent a special messenger to Khandela for bringing slips which had not been received by him but the messenger not having returned in time, the witness himself after waiting for him, proceeded on foot from Dulahpura to Khandela, where, just outside the town he learned from one Vishweshwar Dayal Tewari at 3 P.M. that polling had already stopped, as scheduled, Shri Sobhag Singh who later met the witness at the office of the Ram Rajya Parishad told the witness on being questioned by him, that the slips could not be sent because his (Sobhag Singh's) vehicle had been stopped by the police. In cross-examination the witness stated that the total number of voters at Dulahpura was 300 to 350 and that he remained at Dulahpura from morning to 1-30 P.M. but could not give the name of his co-worker at Dulahpura. He gave conflicting replies when questioned as to whether there was any polling station at Dulahpura.

P.W. 33 Sobhag Singh states that on the polling day at about 1 P.M., he was going in a truck to Dulahpura, having received information from there that slips had not been received for distribution on behalf of the Ram Rajya Parishad.

The truck was stopped at a place near Banarsi by Shri Narendra Kumar, S.I. who had come on a Bus with Chatur-Bhuj a congress worker and some armed policemen and the witness was told by Narendra Kumar that he had orders from the Circle Inspector to stop him from proceeding further. The witness remonstrated that he was going to Dulahpura for distributing slips and that his election work would be greatly hampered if he was detained, and he was even prepared to furnish security, but to no effect. The truck was brought to Khandela near the police station where the witness represented the matter to the Presiding Officer but inspite of the latter's advice, to that effect, Shri Narendra Kumar did not let off the witness saying that there was a risk of losing his job if he did so. The witness says that he was let off after his statement and that of the driver of the truck had been recorded. The witness did not proceed to Dulahpura as it was already 3-30 P.M. when he was let off. According to the witness, voters of Dulahpura who were going to vote for the petitioner, were unable to do so because the slips could not be distributed to them. In cross-examination, the witness admitted that he made no complaint about the alleged obstruction to any authority.

It will be seen from the above that with the exception of Sobhag Singh's own statement, there is no evidence whatsoever, that he was taken into custody by the police according to Narendra Kumar it was only the truck occupied by Sobhag Singh and other persons which was checked and taken to Khandela and since it is the petitioner's own case, that the truck belonged to him, it might naturally have excited the suspicion because it was carrying a number of persons along the petitioner's agent during polling hours. Narendra Kumar does not say that Sobhag Singh was found carrying a bundle of slips nor was he questioned on the point. The memo of checking of the truck by Narendra Kumar was neither summoned nor produced. Bhagwan Sahai P.W. 20 does not at all appear to be a reliable witness, or to know his business. Although he claims to have been an agent of the petitioner for as many as four villages, he does not know that the polling was to continue upto 4 P.M. and not upto 3 p.m. as stated by him and he did not seem to be sure whether there was a polling station at Dulahpura. He did not understand the name 'Dhara Sabha' when questioned in cross-examination. Such a man could hardly have been entrusted with the duty of distribution of slips or even to understand how they were to be dealt with. But even this witness has stated that he was told by Sobhag Singh at the office of the Ram Rajya Parishad that the slips could not be sent to Dulahpura as his vehicle had been stopped by the police and not that he himself had been taken into custody by the police. We therefore, find it difficult to believe the story that the bundle of slips was being sent to Dulahpura and was prevented from reaching there by the action of the police in detaining the truck. According to Narendra Kumar the truck reached Khandela at 3 P.M. while even according to Sobhag Singh he left for Khandela at 1 P.M. Bhagwan Sahai says that he waited at Dulahpura for the slips until 1 P.M. when only three hours were left for the polling to be over. The sending of the bundle of slips at such a nick of time could hardly have served the purpose. In any case, since the figures of voting for each candidate at Dulahpura have not been produced by the petitioner as they could have been from the records of the Returning Officer there is no material before us to conclude that 200 voters of that village or any considerable number of voters was unable to cast votes. The best evidence for the purpose would have been that of the voters themselves which has not been produced.

Our finding on Issue No. 24 is, therefore, in the negative and against the petitioner. Issue No. 26 does not arise in view of our finding on issue No. 25.

Issues Nos. 27 & 28.

"(27) Whether respondent No. 1 committed the corrupt practice of bribery by inducing respondent No. 6 to withdraw unofficially from the contest, after the date of withdrawal, by paying the respondent No. 6 Rs. 10,000.

(28) If the answer to issue No. 27 be in the affirmative, what is its effect on the election."

No evidence has been led on issue No. 27 on behalf of the petitioner and no arguments were addressed on that point. Our finding on the issue, therefore, is in the negative and against the petitioner. Issue No. 28 does not arise.

Issues Nos. 29, 33, and 34 have been already disposed off by our order dated the 23rd March, 1954, as preliminary issues.

Issue No. 30 which is as follows does not arise in view of our finding on issue No. 29.

"(30) If the answer to issue No. 29, be in the affirmative whether the allegation is well founded and what is its effect on the election."

Issue No. 35 which is as follows, also does not arise in view of our finding on the preliminary issue No. 34 against the respondent.

"(35) If the answer to the above issues be in the affirmative whether the petitioner himself committed the following corrupt practices.

- (a) Bribing the voters as specified in schedule No. 1 filed by respondent No. 1.
- (b) Threatening the voters to vote for the petitioner as specified in schedule No. II filed by respondent No. 1.
- (c) Threatening the voters with the dire consequences of being robbed and of thefts to be committed by petitioner's agents if they did not vote for him, as specified in schedule No. III filed by respondent No. 1.
- (d) Threatening the Muslim voters with complete annihilation if they did not vote for the petitioner and voted instead for respondent No. 1 as specified in the respondent's schedule II.
- (e) Making false and mischievous propaganda in the name of Ram Rajya Parishad that the Congress is contemplating the conversion of Hindus into Muslims, the introduction of divorce in Hindu Society and is in favour of cow slaughter, as specified in schedule V filed by respondent No. 1.
- (f) Utilising conveyance for the carrying of voters as specified in schedule No. VI filed by respondent No. 1.
- (g) Making his men impersonate as voters as specified in respondent's schedule No. VII while they were not so.
- (h) By filing false returns and spending more amount than the prescribed limit, as specified in respondent's schedule No. X."

Issue No. 31.

"Whether the election has not been a free election by reason of the corrupt practices of bribery and undue influence having extensively prevailed in the election?"

In view of our findings on all the previous issues relating to alleged corrupt practices, having been already recorded against the petitioner, our finding on this issue also has to be in the negative and against the petitioner.

Issue No. 32.

This issue is only as to the relief. In view of our findings on the above issues, we have no alternative but to dismiss the petition. We allow Rs. 250 to be paid as costs by the petitioner to respondent No. 1.

(Sd.) A. N. KAUL, *Chairman*,

(Sd.) R. K. RASTOGI, *Member*.

(Sd.) S. N. GURTU, *Member*.

Election Tribunal, Jaipur.

The 30th July, 1955.

ANNEXURE

ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION No. 17 OF 1953

Thakur Madan Singh,—*Petitioner.*

Versus

Shri Ladu Ram Chowdhary,—*Respondent.*

PRESENT:—

Shri A. N. Kaul,—*Chairman.*

Shri Sumair Nath Gurtu,—*Member.*

Shri Radha Krishna Rastogi,—*Member.*

Shri Ramesh Chandra and
Shri Hari Prasad Gupta, } *for the petitioner*

Shri D. M. Bhandari and
Shri Brij Sunder Sharma, } *for respondent No. 1.*

By the Court.

(PER KAUL, CHAIRMAN).

JUDGMENT

Dated the 23rd March, 1954

In this election petition the election of respondent 1 has been challenged by the petitioner, Thakur Madan Singh on various grounds and 35 issues were framed by us on the basis of the pleadings of the parties of which the following three issues have been treated as preliminary issues and exhaustive arguments have been heard on them:—

Issue No. 29.—Whether the petitioner's allegation in para 25 of his petition can be the subject of enquiry in this election petition.

Issue No. 33.—Whether the petitioner is not competent within the meaning of S.81 to file the petition and the petition, therefore, deserves to be dismissed.

Issue No. 34.—Whether respondent No. 1 can be permitted to adduce evidence on the allegations contained in para 3 of his additional pleas.

Issue No. 29.—As will be seen from the language of the issue itself it is based on para 25 of the petition, which runs as follows:—

"That about 224 persons of villages (i) Bandi Ka Dikhnada Bas, (ii) Kothri who were legally entitled to be included in the voters list submitted their applications to the proper authority and in time for inclusion of their names in the electoral roll of Neem Ka thana 'A' Constituency but their names were not included in the list and thereby they were deprived of their right of being included in the electoral roll, these persons would have voted for the petitioner. Thus the result of the elections has been materially affected."

Respondent No. 1, who is the only contesting respondent has, in his written statement denied this allegation in the petition and has stated that if the names of the voters were not included in the electoral rolls of the Constituency it was no fault of the respondent and further that this matter cannot be enquired into by this Tribunal in this enquiry. The issue is based on the respondents' contention that the matter regarding the non-inclusion of any persons, as alleged in para 25 of the petition, in the Electoral Roll cannot be the subject of enquiry by this Tribunal.

Learned counsel for the petitioner has contended during arguments, that the non-inclusion in the Electoral Roll of the persons referred to in para 25 of the petition, in the Electoral Roll was a non-compliance with the provisions of the Constitution and was thus covered by the provisions of clause (c) of sub-section (2) of S. 100 of the Representation of the Peoples Act, 1951, which will be

referred to here-in-after as the Act. It was argued that every citizen of India, who is an adult, was entitled to be included in the Electoral Roll and the non-inclusion of so many persons in the roll was a non-compliance with the provisions of the Constitution within the meaning of S. 100(2) (c) of the Act.

In the petition, para 25, there is no reference to any provision of the Constitution of which there might have been a non-compliance. It is simply stated that the names of 224 persons of villages Bawadi Ka Dhikan Ka Bas and Kotri, who were legally entitled to be included in the voters List were not included and they were thereby deprived of their right of being included in the Roll. From the arguments of the learned counsel for the petitioner, it appears, however, that it is the right of adult suffrage i.e. the right of every citizen to be included in the electoral roll, provided for in Art. 326 of the Constitution which is alleged not to have been infringed. The allegation, as will be seen from para 25 of the petition, is not specifically stated in it. But apart from this objection, there is a definite procedure (as provided in rules 10 to 19 of the Representation of the Peoples (Preparation of Electoral rolls Rules) 1950, as modified upto 1st November, 1951) for the publication of draft electoral rolls, the notice, inviting claims and objections from persons claiming to be entered on the roll, the procedure of the enquiry by the revising authority and for the decisions of the authority. Certain applications are alleged to have been made to the "proper authority" for inclusion of the names of the 224 persons in the electoral roll and it is said that their names were not included, but the name of the 2 "proper authority" has not been specified nor has any copy of the orders passed by such authority been placed on the record. It is not stated as to whether any further action was taken on behalf of the claimants to adopt the remedies provided in the rules for inclusion of their names. Under rule 18 of the aforesaid rules the decision of the Revision Authority is final but rule 20 provided for the revision of the electoral roll in special cases under the directions of the Election Commission and the procedure in regard to the issue of such directions is contained in S. 25 of the Act. It is not stated in the petition whether the Election Commission was approached and with what result. The allegation in the petition is, therefore, too vague and in the absence of any specific allegation as to whether all the remedies provided in the election rules for the enforcement of such claims have been exhausted, the objection of the respondent that this matter cannot be the subject of enquiry in this petition must be upheld. The Act does not seem to contemplate and inquiry through and election petition into claims and objections in regard to inclusion of voters in the election roll, for there is a regular machinery provided in the Rules for the purpose and this machinery has generally to be availed of before the election. It may be that where all the remedies available to such claimants under the rules have been exhausted, the matter may be a proper subject of inquiry through an election petition. But in the present case there is no justification for such an inquiry. The finding on the issue has, therefore, to be against the petitioner and the answer to the issue is in the negative.

Issue No. 33.—S. 81, of the Act says that an election petition calling in question any election may be presented... to the Election Commission by any candidate at such election of any elector.... The present petition has been made u/s. 81 by one who was admittedly a candidate at the election but was not an elector in the constituency. *Prima facie* therefore, the petitioner is entitled u/s. 81, to present the petition. The objection on behalf of respondent 1 raised in paras 1 and 2 of the additional pleas in his written statement is to the effect that the petitioner being a Jagirdar of Thikana Danta holds an office of profit under the State of Rajasthan and renders various services to the State and is, therefore, disqualified under clause (1) Art. 102 of the Constitution of India from standing as a candidate and since he was neither a voter in the Neem-Ka-Thana 'A' Constituency nor was qualified to be a candidate, was not competent to present this petition u/s. 81 of the Act.

The fact that the petitioner is the Jagirdar of Thikana Danta has been admitted. But the question whether he by virtue of being a mere Jagirdar holds an office of profit and renders services to the State disqualifying him for being a candidate is a matter requiring proof. But assuming, for the sake of argument that Jagirdar of Thikana Danta necessarily holds an office of profit or renders services to the State, which might disqualify him for being a candidate, the question for consideration under the issue is whether it is at all a relevant in this petition to consider the eligibility of the petitioner as a candidate at the election in question and whether it is not enough u/s 81 that he should have been a candidate at the election irrespective of any inherent disqualification in his candidature. Learned counsel for respondent

contends that the petitioner was disqualified under Art. 191 clause (1) (a) for being chosen as a member of the Legislative Assembly of the Rajasthan State by virtue of his holding an office of profit as a Jagirdar under the Government of the State. Obviously the reference to Art. 102 of the Constitution in para 1 of the additional pleas was an error since that Article lays down the disqualifications for being chosen as member of either House of Parliament and not for a State Assembly. The argument of the learned counsel is that u/s. 32 of the Act any person may be nominated as a candidate for election to fill a seat in any constituency only if he is qualified under the provisions of the Constitution and of the Act to be chosen to fill that seat. The disqualifications under the Act have been laid down in S. 7 of the Act. According to the learned Counsel a candidate could not have been validly nominated, if he was not qualified under the Constitution or under the Act to be chosen to fill the seat in the Assembly and the present petitioner having been disqualified under the Constitution to fill the seat, for reasons already stated, he could not have been a candidate within the meaning of S. 81 of the Act and was not competent to present this petition. Reliance was placed on two English decisions namely the case of *Monks Vs. Jackson*, (L.R. Common Pleas Division 1875-76, Vol. No. 1 at page 683), and the case of *Harford Vs. Linskey* (1899 Kings Bench Division Vol. 1 Page 852). On behalf of the petitioner, in reply stress, was laid on the words "any candidate at such election" in S. 81 was showing that any person who had been a candidate at the election in question irrespective of any disqualification, can present the petition and the definition of the word "Candidate" in S. 79 of the Act was also referred to in support of the petitioner's competence to present the petition.

We have carefully considered the provisions of S. 32 and the effect of the English Authorities, cited on the respondents behalf. In the case of *Monks V. Jackson*, the election of the respondent to a Municipal Borough in the County Lancaster was challenged through an election petition by a person who had been nominated as a candidate for his ward and whose nomination paper, admittedly, had been delivered to the town clerk by one Thomas Scott, authorised Agent of the petitioner and of his proposer and seconder in that behalf. But the said nomination paper was not otherwise delivered to the said town clerk either by the petitioner himself or by the proposer or by the seconder although the law required that the nomination paper should have been delivered by the candidate himself or by his proposer or his seconder to the town clerk. It was on these grounds that it was held by Lord Colridge C. J. in that case, that there appeared to be a fatal objection to the petitioner's competence and that on the fact of the case itself petitioners were not entitled to be candidates at the election and were not, therefore, qualified to appear to question the validity of the election. This decision was referred to in the case of *Harford Vs. Linskey* but was distinguished. In the latter case the petitioner and the respondent were nominated in proper form for election to the office of a councillor for a ward in the borough. But the petitioner was, at the time of this nomination, interested in a contract with the corporation of the Borough and in the respondent's objection to the petitioner's nomination by reason of his disqualification for election was upheld by the Mayor and the respondent being the only other nominated person was declared elected. It appeared that the Lord Mayor was not empowered to entertain an objection of that kind. It was however, observed by Wright J. in his judgment in the case, that the case of *Monks Vs. Jackson* did not seem to be in point for in that case the decision was that the petitioner had not been nominated in fact and was, therefore, not qualified to petition while in the case before them the petitioner had been nominated in fact and his nomination was in regular form and he was, therefore, a candidate. It was, therefore, held on these grounds that the petitioner was qualified to maintain the petition not for the purpose of claiming the seat but for the purpose, of suit that there was no valid election. It will thus be seen that the decision in the case of *Harford Vs. Linskey* is not at all helpful to the respondent's case. On the contrary it supports the petitioner's contention on the point in issue. The observations of Wright J. in the case of *Harford Vs. Linskey* with respect to the decision in the case of *Monks V. Jackson* would be applicable *in toto* to the facts of the present case. There is here no question about the nomination of the petitioner at the bye election in question not having been made in due form and it is a fact that he was nominated at the election in the prescribed manner and his name appears to have been included in the list of valid nominations u/s. 38. The decision in the case of *Monks Vs. Jackson* would not, therefore, be applicable to the facts of the present case, there being nothing on the face of the present petition to disentitle the petitioner from presenting the petition and in so far as the decision in *Harford Vs. Linskey* is concerned it is, as already pointed out, in favour of the petitioner's stand on this point.

Quite apart from the principles of the decision in *Harford Vs. Linskey*, however, the definition of the word "candidate" in S. 79 of the Act affords a complete answer to the argument of learned counsel for the respondent. According to the definition "a candidate means a person, who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when with the election in prospect, he began to hold himself out as a prospective candidate." It will be seen that, in the definition a candidate includes not only a person, who has been duly nominated at an election but also one who claims to have been duly nominated as a candidate. In view of this definition the question of the validity of a nomination or any inherent disqualification in a candidate whose nomination has been accepted does not seem to arise in so far as the application of S. 81, is concerned. We have no doubt, therefore, that the petitioner is quite competent to present the petition irrespective of any disqualification that he might or might not have had for being chosen for the seat in the State Assembly.

The finding on the first part of the issue is, therefore, in the petitioner's favour i.e. to say we hold that the petitioner was quite competent within the meaning of S. 81 to present the petition. As to the second part of the issue the question of dismissal of the petition does not arise.

Issue No. 34.—This issue was not pressed by respondent No. 1 and the finding on the issue, is therefore, against the respondent.

In view of our findings on issues Nos. 29, and 33, the trial of the petition on the other issues will proceed.

(Sd.) ANAND NARAIN KAUL, *Chairman.*

(Sd.) S. N. GURTU, *Member.*

(Sd.) R. K. RASTOGI, *Member.*

Election Tribunal, Jaipur.

[No. 82/17/53/10945]

By Order,

P. S. SUBRAMANIAN, *Secy.*